

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NO. 09-10206-RWZ-WGY-GAO

In the Matter of
JEFFREY AUERHAHN

ORDER
July 7, 2010

ZOBEL, D.J.

In response to the court's request to both parties for proposed procedures, the parties agreed to provide a full copy of the Office of Professional Responsibility ("OPR") Report under seal. However, while respondent agreed to accept the Report as the findings in this action, bar counsel proposed a number of additional documents to elaborate on the Report and "give the court a sufficient basis to make an independent decision on the charges in bar counsel's petition without the need for another evidentiary hearing." The petition accuses respondent of violating specified Disciplinary Rules in two respects: (1) by his failure to preserve and disclose to the defense exculpatory evidence prior to and during the trials of Vincent M. Ferrara and Pasquale G. Barone,¹ Criminal No. 89-00289-MLW (¶¶ 129-132); and (2) by failing to produce his trial outline in response to the court's order during a hearing on motions under 28 U.S.C. § 2255, Civil Action Nos. 98-11104 and 00-11693. (¶¶ 134 and 135.)

¹ The trial of Ferrara ended when he entered a plea of guilty on January 22, 1992, after the jury had been impaneled. Barone's trial, delayed by an appeal from a suppression ruling, started on September 20, 1993, and concluded on October 29, 1993, with a verdict of guilty on three counts and a hung jury as to the fourth.

The OPR Report is largely divided into two parts. First, it details the Facts and Relevant History (pages 4-56), and second, it provides an Analytical Framework, Findings and Conclusions (pages 57-114). In accordance with the parties' agreement, the court will proceed to its consideration of the issues on the basis of only the first part of the Report, pages 4-56, but it will also accept such additional written submissions proffered by the parties as the court deems appropriate. The record will therefore include, in addition to the OPR Report, the following documents offered by bar counsel:

1. Respondent's statement under oath to OPR with his corrections;
2. Respondent's testimony from the § 2255 proceedings along with the testimony of AUSA Gregg Sullivan, Former FBI Special Agent Michael Buckley, former detective Martin Coleman and Walter Jordan;

3. Exhibits introduced at the § 2255 hearing including but not limited to Coleman's handwritten memo, a typed report, the respondent's notes taken in Utah in July 1993, and his trial outline with notes taken in Minneapolis, Minnesota, in August 1993; and

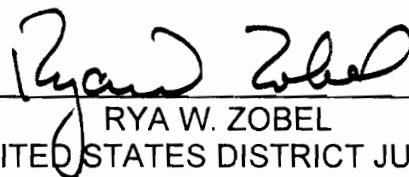
4. The order of the federal district court issued on August 14, 2003, requiring the government to produce any reports or notes made by Jordan, Auerhahn, Sullivan, Buckley and Coleman regarding any discussion with Jordan at any time, and the relevant portions of the transcript of the § 2255 proceedings addressing the government's obligation to comply with that order.

On or before July 30, 2010, respondent may file objections to the documents listed above and/or offer any additional written materials he wishes the court to consider.

Bar counsel may file her objections to respondent's submission and/or proposed additions to the record by August 20, 2010.

The court does not anticipate receiving any oral evidence. The parties may, however, file simultaneous briefs on the merits, including, if necessary, any sanction, by September 10, 2010. The court will hear argument on September 30, 2010, at 2:00 pm.

July 7, 2010
DATE



RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE